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June 20, 2002

VIA HAND DELIVERY

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

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JUN 20 2002

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: Joint Application by BellSouth Corporation, et al. for Provision of In-Region, InterLATA Services in Alabama, Kentucky, Mississippi, North Carolina, and South Carolina

Dear Ms. Dortch:

Accompanying this letter is BellSouth's Joint Application for Provision of In-Region, InterLATA Services in Alabama, Kentucky, Mississippi, North Carolina, and South Carolina ("Joint Application").

Pursuant to the Commission's filing requirements, the following are being provided with this letter:

- Two CD-ROM sets containing the entire Joint Application, in electronic form, redacted for public inspection. The Joint Application includes a brief in support of the Joint Application, one appendix of affidavits and supporting exhibits, and 22 appendices containing additional supporting documentation (4 for Alabama, 4 for Kentucky, 4 for Mississippi, 6 for North Carolina, and 4 for South Carolina).
- One original and one copy of the Joint Application in paper form, redacted for public inspection.
- One original in paper form of only those portions of the Joint Application that contain confidential information. This includes portions of Appendix A (Affidavits), Appendix C (Section 271/SGAT Proceedings) for Kentucky, Mississippi, North

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Carolina, Appendix D (UNE) for Alabama, Kentucky, Mississippi, North Carolina, and South Carolina, Appendix E (Collocation) for North Carolina, and Appendix E (Selected Documents) for Mississippi. A copy of this letter accompanies the confidential portions of the Joint Application. The material designated as confidential includes information relating to carriers' wholesale and retail operations in Alabama, Kentucky, Mississippi, North Carolina, and South Carolina, and as to BellSouth's costs as well as other information containing trade secrets. None of this information is disclosed to the public, and disclosure would cause substantial harm. As such, we are requesting that these portions of the Joint Application receive confidential treatment by the Commission.

We are submitting a copy of the Joint Application, in paper form, redacted for public inspection, to Qualex (the Commission's copy contractor). In addition, we are providing the Wireline Competition Bureau with 12 copies of the brief and 12 copies of Appendix A (3 complete copies and 9 copies without the performance material) in paper form, as well as 12 CD-ROM versions of the entire Joint Application in electronic form. All those copies of Appendix A have been redacted for public inspection. Furthermore, we are submitting to the Bureau one copy in paper form of only those portions of the Joint Application that contain confidential information.

We are also submitting one copy of this cover letter and with 4 copies of the brief, 4 copies of Appendix A (1 complete copy and 3 copies without the performance material) in paper form, redacted for public inspection, to Cynthia Lewis, U.S. Department of Justice, 1401 H Street, N.W., Suite 8000, Washington, D.C. 20530. We are also including one copy of the state record proprietary material and 4 copies of the proprietary portions of Appendix A in paper form and 7 CD-ROMs containing the entire Joint Application in electronic form, redacted for public inspection.

All inquiries relating to access (subject to the terms of any applicable protective order) to any confidential information submitted by BellSouth in support of the Joint Application should be addressed to:

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Finally, we are submitting with this cover letter one original and four copies of Southwestern Bell's Motion to Exceed Page Limits.

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Please date-stamp the extra copy of this letter and return it to the individual delivering this package. If you have any questions, please contact me at (202) 326-7975. Thank you for your assistance in this matter.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'S. Lev', with a stylized flourish at the end.

Sean A. Lev

Encs.

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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of

Joint Application by BellSouth Corporation,
BellSouth Telecommunications, Inc.,
and BellSouth Long Distance, Inc. for
Provision of In-Region, InterLATA Services
in Alabama, Kentucky, Mississippi, North
Carolina, and South Carolina

WC Docket No. _____

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JUN 20 2002

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

**BRIEF IN SUPPORT OF APPLICATION BY BELL SOUTH FOR PROVISION
OF IN-REGION, INTERLATA SERVICES IN ALABAMA, KENTUCKY, MISSISSIPPI,
NORTH CAROLINA, AND SOUTH CAROLINA**

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ATTACHMENTS

- Attachment 1: CLEC Entry Chart
- Attachment 2: Required Statements
- Attachment 3: Certifications
- Attachment 4: Status of Federal Court Challenges Under 47 U.S.C. § 252(e)(6)
- Attachment 5: Detailed Index of Appendices (Separately Bound)

Affidavits (Appendix A)

- A Ken L. Ainsworth
(Local Carrier Service Center)
- B Pavan Bhalla
(BellSouth Long Distance Section 272 Compliance)
- C D. Daonne Caldwell
(Cost Studies)
- D Alfred A. Heartley
(Network Regionality)
- E Jamshed K. Madan and Michael D. Dirmeier
(North Carolina Loop Rate Study)
- F W. Keith Milner
(Interconnection; Access to Network Elements; Poles, Ducts, Conduits, and Rights-of-Way; Loops; Transport; Switching; Access to 911, E911, Directory Assistance, and Operator Call Completion; White Pages Listings; Number Administration; Access to Databases and Associated Signaling; Number Portability; Local Dialing Parity; Reciprocal Compensation; Resale)
- G John A. Ruscilli and Cynthia K. Cox
(Policy; Pricing; SGATs and Binding Legal Commitments; Local Switching; Local Dialing Parity; Reciprocal Compensation; Resale; Section 272 Compliance)
- H David P. Scollard
(Billing)
- I William N. Stacy
(Access to OSS)
- J Elizabeth Stockdale
(Competition and Public Interest)
- K Alphonso J. Varner
(Performance Measures)

GLOSSARY OF 271 ORDERS

<i>Connecticut Order</i>	Memorandum Opinion and Order, <i>Application of Verizon New York Inc., et al., for Authorization to Provide In-Region, InterLATA Services in Connecticut</i> , 16 FCC Rcd 14147 (2001)
<i>GA/LA Order</i>	Memorandum Opinion and Order, <i>Joint Application by BellSouth Corp., et al., for Provision of In-Region, InterLATA Services In Georgia and Louisiana</i> , CC Docket No. 02-35, FCC 02-147 (rel. May 15, 2002)
<i>KS/OK Order</i>	Memorandum Opinion and Order, <i>Joint Application by SBC Communications Inc., et al., for Provision of In-Region, InterLATA Services in Kansas and Oklahoma</i> , 16 FCC Rcd 6237 (2001), <i>remanded</i> , <i>Sprint Communications Co. v. FCC</i> , 274 F.3d 549 (D.C. Cir. 2001)
<i>Massachusetts Order</i>	Memorandum Opinion and Order, <i>Application of Verizon New England Inc., et al., For Authorization to Provide In-Region, InterLATA Services in Massachusetts</i> , 16 FCC Rcd 8988 (2001)
<i>Michigan Order</i>	Memorandum Opinion and Order, <i>Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services In Michigan</i> , 12 FCC Rcd 20543 (1997)
<i>New York Order</i>	Memorandum Opinion and Order, <i>Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act To Provide In-Region, InterLATA Service in the State of New York</i> , 15 FCC Rcd 3953 (1999)
<i>Pennsylvania Order</i>	Memorandum Opinion and Order, <i>Application of Verizon Pennsylvania Inc., et al. for Authorization To Provide In-Region, InterLATA Services in Pennsylvania</i> , 16 FCC Rcd 17419 (2001)
<i>Second Louisiana Order</i>	Memorandum Opinion and Order, <i>Application of BellSouth Corp., et al., for Provision of In-Region, InterLATA Services in Louisiana</i> , 13 FCC Rcd 20599 (1998)

South Carolina Order

Memorandum Opinion and Order, *Application of BellSouth Corp., et al. Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services In South Carolina*, 13 FCC Rcd 539 (1997), *aff'd*, *BellSouth Corp. v. FCC*, 162 F.3d 678 (D.C. Cir. 1998)

Texas Order

Memorandum Opinion and Order, *Application by SBC Communications Inc., et al., Pursuant to Section 271 of the Telecommunications Act of 1996 To Provide In-Region, InterLATA Services In Texas*, 15 FCC Rcd 18354 (2000)

INTRODUCTION AND EXECUTIVE SUMMARY

Pursuant to section 271(d)(1) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996 (the “1996 Act” or “Act”), 47 U.S.C. § 271(d)(1), BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc. (collectively, “BellSouth”) hereby seek authorization to provide interLATA services originating in the States of Alabama, Kentucky, Mississippi, North Carolina, and South Carolina, including all services treated as such under 47 U.S.C. § 271(j).

Last month, this Commission unanimously concluded that BellSouth “has taken the statutorily required steps to open its local exchange markets in Georgia and Louisiana to competition.”¹ That conclusion was the culmination of an intensive review of BellSouth’s compliance with the competitive checklist, as well as all other section 271 requirements. The Commission’s exhaustive proceedings lasted nearly eight months, during which time the Commission reviewed a record stretching to tens of thousands of pages, probed scores of issues raised by commenters, and ultimately concluded that none of those claims demonstrated statutorily inadequate performance. The Commission’s conclusion that BellSouth satisfied all legal obligations, moreover, accorded with the express recommendation of the Department of Justice – which, in advising approval, specifically highlighted the “important” OSS changes that BellSouth has made to “facilitate competitive entry”² – *and* with the judgments of both the Georgia and Louisiana Commissions, each of which independently recommended approval.

This Application should be approved for the same reasons that the Commission enunciated in its recent order. First, BellSouth’s processes and systems are regional, and thus the

¹ *GA/LA Order* ¶ 1.

² Evaluation of the United States Department of Justice at 7, 9, CC Docket No. 02-35 (FCC filed Mar. 21, 2002).

Commission's findings of compliance for Georgia and Louisiana apply equally to the states at issue here. Indeed, this Commission already accepted BellSouth's evidence of regionality, including an independent third-party audit demonstrating that BellSouth's systems are the "same" across state lines.³ That same evidence (including the audit) applies equally to all nine states in BellSouth's region.

Moreover, as in Georgia and Louisiana, each of the five state commissions here conducted extensive proceedings on section 271 compliance. Those proceedings were "open to participation by all interested parties."⁴ After those proceedings, *all five commissions* independently concluded that BellSouth satisfied all checklist requirements. As in the Georgia/Louisiana proceeding, the considered judgments of these five commissions, each with unique expertise as to market conditions in its state, provide significant added reason to conclude that BellSouth has met all legal obligations.

Additionally, as in Georgia and Louisiana, each of these state commissions also held elaborate and open proceedings to establish TELRIC-compliant rates. In those proceedings, the state commissions relied on the *same BellSouth cost methodologies* that this Commission correctly found provided the basis for TELRIC-compliant rates in Georgia and Louisiana. CLECs, moreover, raised the same issues about the BellSouth studies and inputs that this Commission has already reviewed and rejected in the Georgia/Louisiana proceeding. Accordingly, the rates established by the expert commissions here are equally consistent with the Commission's rules, and there is no basis for the Commission to overturn their record-based judgments.

³ *GA/LA Order* ¶ 111.

⁴ *Id.* ¶ 5.

BellSouth's performance remains as good or better than in the Georgia/Louisiana proceeding. Across all five states, BellSouth routinely meets the vast majority of performance metrics. For all submetrics that had activity for each month from January through March 2002, BellSouth met or exceeded the retail analogue performance in at least two of three months for 89% of measures in Alabama; 93% in Kentucky; 91% in Mississippi; 90% in North Carolina; and 91% in South Carolina. *See Varner Aff.* ¶ 10 (table) (App. A, Tab K). Those figures are slightly higher than the 88% for Georgia and 89% for Louisiana for the last three months of data before the Georgia/Louisiana supplemental filing. *See id.* ¶ 11. Additionally, BellSouth has met all its collocation benchmarks for all five states for each of the last three months of data, has routinely met its hot-cut metrics, and has demonstrated solid performance for Firm Order Confirmations ("FOCs"), rejects, and other key metrics.

CLECs' actions in the real world, moreover, again confirm that BellSouth's markets are open on a region-wide basis. CLECs have gained double-digit market share in Alabama (11.2%), North Carolina (12.9%), and South Carolina (10.7%), and are doing nearly as well in Mississippi (8.0%) and Kentucky (7.3%). Indeed, Mississippi has the highest CLEC market-share for residential customers of any of the five states.⁵ Moreover, the aggregate market-share figures in Mississippi and Kentucky are comparable to the CLEC market share in Louisiana (8.9%) at the time of BellSouth's last application, and are significantly higher than other states at the time of successful 271 applications. *See Attach. 1* (market-share comparisons to approved states). Further proof that BellSouth's markets are open across its region is provided by WorldCom, which recently announced that it would offer its new "Neighborhood" plan in all

⁵ *Stockdale Aff.* ¶ 5 (App. A, Tab J).

nine BellSouth states.⁶ Given WorldCom's indication that it only enters local markets where the incumbent telephone companies have "open[ed] their markets to competition,"⁷ its broad-based entry across the BellSouth region provides important evidence fortifying the conclusion that BellSouth's systems can and do support broad-based competitive entry.

BellSouth has also recently made further system improvements since its February 14, 2002 Supplemental Georgia/Louisiana Application that make this Application even stronger than the one for Georgia and Louisiana. These improvements respond directly to CLEC concerns. Of particular importance, consistent with the evolving nature of a proper Change Control Process ("CCP"), BellSouth has made a series of enhancements to its change control plan since that time. Those improvements include adopting verbatim the CLECs' proposed definition of a "CLEC-affecting" change subject to the CCP; providing CLECs with significant additional information about capacity in future releases; implementing more CLEC-prioritized changes (nine of the "Top 15" requests have now been implemented); and adopting further changes to the CLEC Application Verification Environment ("CAVE") testing system so that already-compliant system will be even more useful to CLECs. Additionally, with this Application, BellSouth demonstrates an even longer period of consistent compliance with CCP plan deadlines.

⁶ C.S. Robinson, U.S. Bancorp Piper Jaffray, Investext Rpt. No. 8478041, WorldCom Inc. – MCI Group – Company Report at *3 (Apr. 15, 2002) ("MCI currently has 1.5 million customers with services offered in 11 states including [Georgia and Florida]. These customers generate \$650 million in annual revenue. MCI Neighborhood will be offered in 32 states. States that will be added to those where MCI Local services [are] already available are: [among others, Alabama, Tennessee, Mississippi, Kentucky, Louisiana, and South Carolina]."); *see also* MCI WorldCom, *The Neighborhood: Home Page*, at <http://www.theneighborhood.com> (entering a North Carolina number in the "Want to Join?" portion of the page results in a subsequent page stating, "Your number [] is part of The Neighborhood. So take advantage of one of these great plans.").

⁷ MCI WorldCom, *The Neighborhood: Help*, at http://www.theneighborhood.com/res_local_service/jsps/help.jsp?subpartner=#q12.

Moreover, by implementing change requests, BellSouth has enhanced its OSS capabilities, again in ways directly responsive to CLEC concerns. Among other things, BellSouth has implemented a series of new electronic capabilities to improve flow-through; has enhanced its parsed customer service record (“CSR”) by adding hunting fields; has improved CLECs’ abilities to track orders; and has addressed minor glitches affecting line-loss reporting. BellSouth also demonstrates continued strong performance in the area of service order accuracy, an area of concern at the beginning of the Georgia/Louisiana proceeding.

For all these reasons, this Application is as strong or stronger than the one the Commission recently approved, and it should be approved for all five states.

* * *

Part I of this Brief summarizes the extensive proceedings that the state commissions in these five states have undertaken, with full CLEC participation, to ensure BellSouth’s adherence to the pro-competitive requirements of the 1996 Act. Part II demonstrates that BellSouth easily satisfies Track A in all five states. Part III discusses the comprehensive set of performance measurements – the same measurements this Commission reviewed in the Georgia/Louisiana proceeding – on which BellSouth relies to show that it satisfies the competitive checklist in each of the five states. Part IV shows in detail that BellSouth does, in fact, satisfy the checklist by providing competing carriers in all five states with interconnection and network access in accordance with statutory and regulatory requirements. Part V demonstrates that approving BellSouth’s Application is consistent with the public interest. Finally, Part VI confirms that BellSouth will abide by the safeguards of section 272.⁸

⁸ BellSouth intends to offer in-region, interLATA services in each of the five states through BellSouth Long Distance, Inc. (“BSLD”), which will operate in accordance with the

This Brief and its supporting affidavits are available in electronic form at <http://www.bellsouthcorp.com/policy/271>.⁹

I. THE STATE PROCEEDINGS

This Commission has long encouraged states to play a significant role in the section 271 process. States may “facilitate the development of successful section 271 applications” by “conduct[ing] proceedings concerning . . . section 271 compliance with opportunities for participation by interested third parties” and by “adopt[ing] a broad range of clearly defined performance measures and standards,” including a performance assurance plan “designed to create a financial incentive for post-entry compliance.” *KS/OK Order* ¶ 3. As BellSouth describes below, in each of these five states, the state commission has undertaken these burdens. Thus, their unanimous views that BellSouth has earned section 271 authority should be entitled to “substantial weight” in this proceeding. *Texas Order* ¶ 51.

Moreover, these commissions have not only undertaken detailed and open proceedings of their own; they have also built upon the work of other state commissions in BellSouth’s region, including the Georgia and Louisiana PSCs. Although each state held its own independent proceeding, with full CLEC participation, to determine statutory compliance, these commissions also appropriately took advantage of what this Commission has rightly termed “the enormous time and effort” devoted by the Georgia and Louisiana PSCs, *GA/LA Order* ¶ 2, by adopting for

requirements of section 272. However, all references to BellSouth Long Distance, Inc., should be understood to encompass any affiliate of BellSouth Telecommunications, Inc. (“BST”) (or its successors or assigns that provide wireline telephone exchange service) that operates in a manner consistent with this Application’s representations regarding the future activities of BSLD. BellSouth will file an international section 214 application so that its affiliate can originate international calls.

⁹ The Anti-Drug Abuse Act certifications required under 47 C.F.R. § 1.2002 are provided as Attachment 3 to this Brief.

purposes of section 271 compliance the same performance plan that was developed by the Georgia PSC after extensive hearings and collaboratives, all with significant CLEC participation. *See id.* ¶ 16 (noting that BellSouth's performance plan was "developed in an open, collaborative proceeding").

As this Commission has recognized, such a cooperative approach should be encouraged. In the *KS/OK Order*, this Commission "commend[ed]" the relevant state agencies for "using the successful work of the Texas Public Utility Commission . . . as a starting point for the development of their own section 271 reviews"; that practice, this Commission noted, could serve as a "model for the development of successful section 271 applications in other similarly situated states." *KS/OK Order* ¶ 2.

As BellSouth demonstrates below, each of these five states has employed that model successfully here by both undertaking its own thorough proceedings and utilizing the hard work of other state agencies. The consistent conclusions of these states that BellSouth's markets are open to competition provides important evidence that this Application should be approved.

A. Alabama

The Alabama Public Service Commission ("APSC" or "Alabama PSC") recommended section 271 approval after holding exhaustive proceedings to determine BellSouth's compliance with all legal requirements. Among other things, during the course of the APSC proceedings, CLECs had the opportunity to file testimony, undertake discovery (including document requests and depositions), and participate in three rounds of hearings, multiple days of which were devoted exclusively to the regionality of BellSouth's OSS and the relevance of the Georgia Third-Party Test. Moreover, BellSouth provided the APSC with its complete February 14, 2002, supplemental Georgia/Louisiana filing with this Commission, so that the APSC was aware of,

and could evaluate, BellSouth's showing as to all the key issues that previously concerned this Commission. The APSC's ultimate judgment that BellSouth complies with section 271 in all respects merits significant respect.

On May 8, 2001, BellSouth notified the APSC of its intention to file a section 271 application for interLATA relief in Alabama. Along with its petition, BellSouth filed a new Statement of Generally Available Terms and Conditions ("SGAT"), performance measurement and penalty plans, comments, direct testimony, March 2001 performance data, and other supporting materials.¹⁰ Intervenors filed rebuttal testimony on checklist compliance issues on June 5, 2001, and then BellSouth filed reply testimony. From June 25 through June 29, 2001, the APSC held a full week of hearings devoted exclusively to checklist compliance issues.¹¹

In June 2001, BellSouth also filed supplemental materials relating to the Georgia Third-Party Test, performance measures, and OSS regionality issues; intervenors then filed rebuttal testimony, and additional hearings on those issues were held from July 30 through August 1, 2001.¹² Moreover, after the Georgia PSC approved BellSouth's 271 application for that state and

¹⁰ BellSouth's Prefiled Testimony on Section 271 Compliance of K. Ainsworth, J. Latham, W. Milner, E. Mulrow, R. Pate, J. Ruscilli, D. Scollard, T. Williams, and A. Varner, *BellSouth Telecommunications, Inc. Petition for Approval of a Statement of Generally Available Terms and Conditions Pursuant to § 252(f) of the Telecommunications Act of 1996, and Notification of Intention to File a Petition for In-Region InterLATA Authority*, Docket No. 25835 (APSC filed May 8, 2001) (App. C – AL, Tab 3); *Ruscilli/Cox Joint Aff. Exh. JAR/CKC-14* at 3-4 (App. A, Tab G).

¹¹ See App. C – AL, Tabs 9-13; *Ruscilli/Cox Joint Aff. Exh. JAR/CKC-14* at 5; Proposed Order of BellSouth Telecommunications, Inc. at 5, *BellSouth Telecommunications, Inc. Petition for Approval of a Statement of Generally Available Terms and Conditions Pursuant to § 252(f) of the Telecommunications Act of 1996, and Notification of Intention to File a Petition for In-Region InterLATA Authority*, Docket No. 25835 (APSC filed Dec. 20, 2001) ("*BellSouth Proposed Order*") (App. C – AL, Tab 28).

¹² See BellSouth's Prefiled Testimony of K. Ainsworth, A. Heartley, R. Pate, D. Scollard, and A. Varner Concerning Regionality and Third-Party Testing, *BellSouth Telecommunications, Inc. Petition for Approval of a Statement of Generally Available Terms and Conditions Pursuant*

adopted the Georgia Third-Party Test Final Report, intervenors filed further rebuttal testimony and BellSouth again filed reply testimony.¹³ The APSC then held still another evidentiary hearing on third-party testing on November 27, 2001.¹⁴

On March 11, 2002, the APSC incorporated BellSouth's entire February 14, 2002 Georgia and Louisiana filing into its record. *See Further Order, BellSouth Telecommunications, Inc. Petition for Approval of a Statement of Generally Available Terms and Conditions Pursuant to § 252(f) of the Telecommunications Act of 1996, and Notification of Intention to File a Petition for In-Region InterLATA Authority*, Docket No. 25835 (APSC Mar. 11, 2002) (App. C – AL, Tab 29). Then, after this Commission approved BellSouth's Application for Georgia and Louisiana, the APSC held a special meeting on May 22, 2002, and unanimously approved BellSouth's Petition for In-Region InterLATA Authority in Alabama. Notice of Decision, *BellSouth Telecommunications, Inc. Petition for Approval of a Statement of Generally Available Terms and Conditions Pursuant to § 252(f) of the Telecommunications Act of 1996, and Notification of Intention to File a Petition for In-Region InterLATA Authority*, Docket No. 25835 (APSC May 30, 2002) (“APSC 271 Order”) (App. C – AL, Tab 30); *Ruscilli/Cox Joint Aff.* ¶ 96 (App. A, Tab G). The APSC stated that it “will formally fulfill its consultative role pursuant to §271(b)(2)(B) of the Act at the appropriate time and in response to the [FCC's] request for comments following BellSouth's submission of its request for In-Region InterLATA authority in Alabama with the FCC. At such time, the [APSC] will enter an order which will

to § 252(f) of the Telecommunications Act of 1996, and Notification of Intention to File a Petition for In-Region InterLATA Authority, Docket No. 25835 (APSC filed June 12, 2001) (App. C – AL, Tab 5); App. C – AL, Tabs 18-20 (hearings); *BellSouth Proposed Order* at 5; *Ruscilli/Cox Joint Aff.* Exh. JAR/CKC-14 at 4.

¹³ *BellSouth Proposed Order* at 5.

¹⁴ *Id.*

comprehensively address the myriad of issues raised in the proceedings in this cause and support the ultimate conclusions noted herein.” *APSC 271 Order* at 2.

In addition, the APSC approved BellSouth’s revised SGAT, adopted the Permanent Service Quality Measurements (“SQM”) and Self-Effectuating Enforcement Mechanism (“SEEM”) plans that had been approved by the Georgia PSC on an interim basis, and established a separate proceeding to begin within six months of the date of the order to consider adopting on a permanent basis the SQM and SEEM plans adopted by the Florida PSC. *See id.* at 1. BellSouth continues to file performance data with the APSC every month.

The APSC has also held other proceedings to open local markets to competition. Indeed, within the last few weeks, the APSC issued an order establishing a set of new TELRIC-compliant rates. *See Order, Generic Proceeding To Establish Prices for Interconnection Services and Unbundled Network Elements*, Docket No. 27821 (APSC May 31, 2002) (“*APSC UNE Pricing Order*”) (App. D – AL, Tab 20). The APSC also has undertaken additional proceedings and arbitrated the terms and conditions of interconnection agreements between BellSouth and numerous CLECs. Those proceedings are described in an exhibit to the joint affidavit of John Ruscilli and Cynthia Cox. *See Ruscilli/Cox Joint Aff.* Exh. JAR/CKC-14.

B. Kentucky

Like the Alabama PSC, the Kentucky Public Service Commission (“KPSC” or “Kentucky PSC”) has undertaken significant review, with full CLEC participation, of BellSouth’s section 271 compliance, and it too has unanimously concluded that BellSouth meets all legal requirements for section 271 approval.

On April 26, 2001, the KPSC opened a proceeding to “compile a record that would enable the [KPSC] to advise the [FCC] as to whether [BellSouth] should be permitted to enter

the in-region, interLATA market in Kentucky.”¹⁵ Numerous CLECs and CLEC organizations participated in this docket, including AT&T, WorldCom, ITC^DeltaCom, and the Southeastern Competitive Carriers Association (“SECCA”). *See KPSC 271 Order* at 2.

The KPSC held its first live hearing in that proceeding on September 24-25, 2001. *See App. C – KY, Tabs 10-11* (hearing transcripts). That hearing focused on BellSouth’s performance plan. After hearing from both BellSouth and CLECs on that issue, the KPSC issued an order “adopt[ing] the performance measures, benchmarks and retail analogs, and penalty plan adopted by the Georgia Public Service Commission.” *Order* at 1, *Investigation Concerning the Propriety of Provision of InterLATA Services by BellSouth Telecommunications, Inc. Pursuant to the Telecommunications Act of 1996*, Case No. 2001-00105 (KPSC Oct. 19, 2001) (App. C – KY, Tab 17). The KPSC found the Georgia plan “reasonable” for use in Kentucky. *Id.* at 2. The KPSC also required that BellSouth pay penalties beginning with its November 2001 performance. *See id.* at 3. Additionally, in order to facilitate its continued monitoring of BellSouth’s performance, the KPSC ordered BellSouth to provide a petition for changes to the performance measures within six months – a period that has subsequently been extended to June 19, 2002, to allow for the completion of the Georgia PSC’s ongoing review of BellSouth’s performance and penalty plans.¹⁶

¹⁵ Advisory Opinion at 1, *Investigation Concerning the Propriety of Provision of InterLATA Services by BellSouth Telecommunications, Inc. Pursuant to the Telecommunications Act of 1996*, Case No. 2001-00105 (KPSC Apr. 26, 2002) (“KPSC 271 Order”) (App. C – KY, Tab 38); *see also* *Order, Investigation Concerning the Propriety of InterLATA Services by BellSouth Telecommunications, Inc., Pursuant to the Telecommunications Act of 1996*, Case No. 96-60 (KPSC Apr. 26, 2001) (App. C – KY, Tab 1) (setting procedural schedule).

¹⁶ *See Order, Investigation Concerning the Propriety of Provision of InterLATA Services by BellSouth Telecommunications, Inc. Pursuant to the Telecommunications Act of 1996*, Case No. 2001-00105 (KPSC May 13, 2002) (App. C – KY, Tab 41).

In October 2001, the KPSC then held four additional days of hearings on BellSouth's section 271 compliance. *See* App. C – KY, Tabs 18-21 (hearing transcripts). Based on that hearing, and supplemental information later provided by the parties, the KPSC determined on April 26, 2002, that “BellSouth has achieved compliance with the Competitive Checklist.” *KPSC 271 Order* at 41.

The KPSC issued a substantive opinion supporting that decision and addressing key concerns raised by CLECs during the state proceeding. The KPSC concluded that it was “apparent that BellSouth has, in the past few years, made major advances toward achieving systems that will enable it to provide the necessary parity.” *Id.* at 9. The KPSC then reviewed BellSouth's Track A showing and its evidence as to each checklist item, as well as contrary CLEC claims, and found that all legal requirements were satisfied. *See id.* at 5-41. The KPSC also expressly determined that BellSouth's OSS are regional, which allowed it to rely on, among other things, KPMG's Georgia third-party test of BellSouth's OSS. *See id.* at 14 (“The functional equivalence of these OSS systems . . . is important due to the Commission's reliance on Georgia's performance plan including test date, third-party validation and volume testing.”). The KPSC noted, moreover, that it would continue to “monitor [BellSouth's] performance to ensure that it maintains compliance with Section 271.” *Id.* at 7.¹⁷

Additionally, in a March 15, 2002 order in another docket, the KPSC approved BellSouth's SGAT with one modification, and required that BellSouth file it as a tariff. *See*

¹⁷ Although the KPSC's original order was somewhat unclear on the point, the KPSC subsequently issued an amendment making plain that BellSouth's current two-order UNE-P conversion process was sufficient for checklist compliance, but that the KPSC would “closely monitor implementation of Single C ordering,” which is scheduled for August 3, 2002. Amendment to Advisory Opinion at 1, *Investigation Concerning the Propriety of Provision of InterLATA Services by BellSouth Telecommunications, Inc. Pursuant to the Telecommunications Act of 1996*, Case No. 2001-00105 (KPSC May 24, 2002) (App. C – KY, Tab 42).

Order, *Investigation Regarding Compliance of the Statement of Generally Available Terms of BellSouth Telecommunications, Inc. of Section 251 and 252(d) of the Telecommunications Act of 1996*, Case No. 1998-00348 (KPSC Mar. 15, 2002) (App. E – KY, Tab 30).

The KPSC has also implemented the 1996 Act through a series of other dockets. Of particular relevance, in a December 18, 2001 order in Administrative Case No. 382, the KPSC established a set of TELRIC-complaint rates. *See Order, Inquiry into the Development of Deaveraged Rates for Unbundled Network Elements*, Admin. Case No. 382 (KPSC Dec. 18, 2001) (App. D – KY, Tab 17) (“*KPSC UNE Pricing Order*”). BellSouth discusses this order in greater depth below under Checklist Item 2. The KPSC has also presided over a large number of arbitrations, and has resolved specific issues in the course of those proceedings. Those proceedings are described in an exhibit to the joint affidavit of John Ruscilli and Cynthia Cox. *See Ruscilli/Cox Joint Aff.* Exh. JAR/CKC-16.

C. Mississippi

The Mississippi Public Service Commission (“MPSC” or “Mississippi PSC”) has likewise based its recommendation of section 271 approval on an extensive record.

On May 22, 2001, BellSouth notified the MPSC of its intent to file a federal section 271 application for Mississippi.¹⁸ With that filing, BellSouth provided a new SGAT and performance measures and penalty plans (based on the Georgia SQM performance plan), as well

¹⁸ Notice of BellSouth Telecommunications, Inc.’s Intent to File a Section 271 Application with the Federal Communications Commission, *Consideration of the Provision of In-Region InterLATA Services by BellSouth Telecommunications, Inc. Pursuant to Section 271 of TA 96*, Docket No. 97-AD-321 (MPSC filed May 22, 2002) (App. C – MS, Tab 3).

as testimony and comments.¹⁹ BellSouth subsequently filed performance data for successive months. *See MPSC 271 Order* at 2-3. CLEC intervenors filed comments and testimony on BellSouth's application, and BellSouth filed reply testimony and comments. *See id.* at 3.

In October 2001, the MPSC determined that BellSouth met all legal requirements for section 271 authorization and approved BellSouth's SGAT. In a detailed 117-page order, the MPSC conducted an independent review of BellSouth's compliance with section 271 and noted that it had "closely monitored" both this Commission's orders and the "activities by other state Commissions within BellSouth's region." *Id.* at 2.

Among other things, that MPSC order expressly determined that BellSouth's OSS are regional. Relying on BellSouth's testimony as well as the same PricewaterhouseCoopers ("PwC") attestation that this Commission found persuasive in the *GA/LA Order* (§§ 109-111), the MPSC determined that "BellSouth's OSS are the same throughout its nine-state region." *MPSC 271 Order* at 14. *See also id.* at 38-39 (relying on KPMG's third-party test in Georgia "because BellSouth's OSS are the same region-wide"). The MPSC also found, after addressing in detail contrary CLEC arguments, that BellSouth's SQM plan as adopted by the Georgia PSC was appropriate for use in Mississippi and that BellSouth's "performance measurement data as reported via the SQM are accurate and reliable measures to evaluate BellSouth's checklist compliance." *Id.* at 18. The MPSC, however, reserved the right to "revisit these standards" should that be appropriate at a later date. *Id.* at 117.

The MPSC further held that BellSouth's proposed performance assurance plan – the SEEM plan – was "designed to generate significant payments by BellSouth when discriminatory

¹⁹ *See id.*; Final Order at 2, *Consideration of the Provision of In-Region InterLATA Services by BellSouth Telecommunications, Inc. Pursuant to Section 271 of TA 96*, Docket No. 97-AD-321 (MPSC Oct. 4, 2001) ("MPSC 271 Order") (App. C – MS, Tab 14).

performance that materially affects a CLEC's ability to compete occurs." *Id.* at 19. Accordingly, the MPSC approved that plan with some modifications and made it effective upon the grant of section 271 approval in Mississippi. *See id.* at 22-23.

Since issuing that approval order, the MPSC has ordered that BellSouth continue to file performance data on a monthly basis, so that it "may continue to monitor BellSouth's compliance with the requirements of Section 271." *See Order at 2, Consideration of the Provision of In-Region InterLATA Services by BellSouth Telecommunications, Inc. Pursuant to Section 271 of TA 96*, Docket No. 97-AD-321 (MPSC Apr. 10, 2002) (App. C – MS, Tab 24).

As in the other states, the Mississippi PSC has also implemented the 1996 Act's pro-competitive requirements through a series of other proceedings. On October 12, 2001, it issued a final order in its proceeding establishing TELRIC rates for interconnection and UNEs. *See Final Order, Generic Proceeding To Establish BellSouth Telecommunications, Inc.'s Interconnection Services, Unbundled Network Elements and Other Related Elements and Services*, Docket No. 00-UA-999 (MPSC Oct. 12, 2001) ("MPSC UNE Pricing Order") (App. D – MS, Tab 9). That order is discussed under Checklist Item 2. Other MPSC proceedings, including those pertaining to arbitrations and interconnection agreements with various CLECs, are addressed in an exhibit to the joint affidavit of John Ruscilli and Cynthia Cox. *See Ruscilli/Cox Joint Aff.* Exh. JAR/CKC-18.

D. North Carolina

On April 12, 2001, BellSouth notified the North Carolina Utilities Commission ("NCUC") of its intention to file a federal 271 application for North Carolina. *See Notice of Intent To File Section 271 Application with the Federal Communications Commission and Request for Procedural Order, Application of BellSouth Telecommunications, Inc. To Provide In-*

Region InterLATA Services Pursuant to Section 271 of the Telecommunications Act of 1996, Docket No. P-55, Sub 1022 (NCUC filed Apr. 12, 2001) (App. C – NC, Tab 1).

At the same time, BellSouth filed a new SGAT, performance measurement and penalty plans, direct testimony regarding BellSouth’s compliance with the Act’s requirements in North Carolina, and other supporting materials. *Id.* On June 11, 2001, BellSouth filed April 2001 performance data and analysis. *See Varner Aff.* ¶ 42. BellSouth continues to file performance data with the NCUC every month. *Id.* On September 10, 2001, intervenors filed rebuttal testimony and comments regarding BellSouth’s April 12 filing.²⁰ BellSouth filed reply testimony and comments on October 8, *see* App. C – NC, Tab 3, and the NCUC held evidentiary hearings from October 29 through November 6, 2001, *see* App. C – NC, Tabs 6-13.

On May 23, 2002, the NCUC issued its Notice of Decision, finding that BellSouth has satisfied its obligations under the competitive checklist and Track A of the 1996 Act, and that BellSouth’s entry into the interLATA market in North Carolina is consistent with the public interest. Notice of Decision, *Application of BellSouth Telecommunications, Inc. To Provide In-Region InterLATA Services Pursuant to Section 271 of the Telecommunications Act of 1996*, Docket No. P-55, Sub 1022 (NCUC May 23, 2002) (“*NCUC 271 Order*”) (App. C – NC, Tab 24). In that Notice, the NCUC concluded that “BellSouth has provided sufficient evidence that its OSS are the same in Georgia and North Carolina”; indeed, the NCUC expressly “determin[ed] that BellSouth’s OSS are the same throughout its region.” *Id.* at 2 & n.1. The NCUC also adopted the SQM and penalty plans currently in effect in Georgia on an interim basis

²⁰ *See* BellSouth’s Proposed Order at 2, *Application of BellSouth Telecommunications, Inc. to Provide In-Region InterLATA Services Pursuant to Section 271 of the Telecommunications Act of 1996*, Docket No. P-55, Sub 1022 (NCUC filed Dec. 7, 2001) (App. C – NC, Tab 15).

and for purposes of section 271 compliance until the NCUC's own performance and enforcement mechanisms become effective. *Id.* at 2; *see Varner Aff.* ¶¶ 43-49 (discussing proceedings on the permanent North Carolina plan); Order Concerning Performance and Enforcement Mechanisms, *Generic Docket to Address Performance Measurements and Enforcement Mechanisms*, Docket No. P-100, Sub 133k (NCUC May 22, 2002) (App. F – NC, Tab 13).

The NCUC has also implemented the 1996 Act through a series of other dockets. The NCUC has established TELRIC-based rates for interconnection services and UNEs. *See Ruscilli/Cox Joint Aff.* ¶¶ 174-177. The NCUC also has established standard terms and conditions concerning physical collocation for CLECs in North Carolina. *See Order Addressing Collocation Issues, Generic Proceeding on the Provisioning of Collocation Space*, Docket No. P-100, Sub 133j (NCUC Dec. 28, 2001) (App. E – NC, Tab 25). Finally, the NCUC has presided over arbitrations and decided specific issues in the course of those proceedings. Those proceedings are described in an exhibit to the joint affidavit of John Ruscilli and Cynthia Cox. *See Ruscilli/Cox Joint Aff.* Exh. JAR/CKC-20.

E. South Carolina

In South Carolina, as in all the other states, the state commission found BellSouth to have met the 14-point competitive checklist and recommended approval of BellSouth's section 271 application only after completing an open proceeding in which many CLECs participated.

In response to BellSouth's May 16, 2001 filing of a Notice of Intent to file for section 271 relief – which was accompanied by testimony, a proposed performance measurement and penalty plan, comments, and direct testimony²¹ – the Public Service Commission of South

²¹ Notice of Intent to File Section 271 Application with the Federal Communications Commission, *Application of BellSouth Telecommunications, Inc. to Provide In-Region*

Carolina (“SCPSC” or “South Carolina PSC”) issued a public notice and invited intervenors to file testimony and comments. After receiving those filings, the SCPSC held 14 days of hearings on BellSouth’s compliance, compiling a 5,300-page transcript. *See Varner Aff.* ¶ 51; *Ruscilli/Cox Joint Aff.* Exh. JAR/CKC-22 at 1; App. C – SC, Tabs 7-8, 11-13, 19-25, 27-28 (hearing transcripts). All seven commissioners subsequently voted to recommend approval of BellSouth’s application.²²

In its 121-page decision explaining that conclusion, the SCPSC expressly determined that the record evidence established that BellSouth’s OSS are regional. *See SCPSC 271 Order* at 19 (finding that BellSouth “meets each of the[] criteria” established by this Commission for the “sameness” of its OSS). *See also id.* at 48 (relying on KPMG’s third-party test in Georgia because “BellSouth operates its OSS on a region-wide basis”). The SCPSC also determined that the SQM plan adopted by the Georgia PSC was “reasonable, comprehensive, and complete” and “readily allows the [SCPSC] and the CLECs to monitor BellSouth’s performance and to determine if BellSouth is providing nondiscriminatory access to CLECs in South Carolina.” *Id.* at 24. Accordingly, “after careful consideration of the SQM,” the SCPSC adopted the Georgia SQM “in its entirety for the purposes of evaluating BellSouth’s performance in South Carolina.” *Id.* In response to CLEC concerns, however, the SCPSC specifically ordered BellSouth to add “appropriate metrics that measure and assess the responsiveness of BellSouth to CLECs’ requests submitted via the Change Control Process.” *Id.* at 25; *see Varner Aff.* ¶¶ 53-54. The

InterLATA Services Pursuant to Section 271 of the Telecommunications Act of 1996, Docket No. 2001-209-C (SCPSC filed May 16, 2001) (App. C – SC, Tab 1).

²² Order Addressing Statement and Compliance with Section 271 of the Telecommunications Act of 1996 at 121, *Application of BellSouth Telecommunications, Inc. To Provide In-Region InterLATA Services Pursuant to Section 271 of the Telecommunications Act of 1996*, Docket No. 2001-209-C, Order No. 2002-77 (SCPSC Feb. 14, 2002) (“SCPSC 271 Order”) (App. C – SC, Tab 33).

SCPSC further concluded that BellSouth's data are "reliable" and that BellSouth is "fully committed to rigorous, multi-level review and audit of its performance measures to ensure the validity of its data." *SCPSC 271 Order* at 25-26.

The SCPSC, again like the other state commissions, also made plain that it would "continue to review" BellSouth's performance plan "to prevent backsliding." *Id.* at 25. The SCPSC committed to a review of the SQM every six months after section 271 approval by this Commission. *See id.* at 25, 119-20 ("The [SCPSC] will continue to review the SQM and the performance of the [Incentive Payment Plan] on a regular basis in order to monitor BellSouth's performance and to prevent backsliding on the part of BellSouth. Beginning on January 1, 2002, and continuing on a monthly basis thereafter, BellSouth shall submit performance data to the [SCPSC], and such submittal shall include both raw and manipulated data. Further, documentation on calculations, aggregations, and disaggregations, pursuant to which the data is captured shall be included in the submittal.").

The SCPSC also concluded that BellSouth's SEEM plan (which the SCPSC renamed the Incentive Payment Plan or "IPP") is designed to meet this Commission's standards for such plans. *See id.* at 28 (citing *New York Order* ¶ 433). The SCPSC determined that the penalties included in that plan are "meaningful and significant and will serve as a deterrent to backsliding once section 271 approval is granted, as intended by the FCC." *Id.* at 30; *see Varner Aff.* ¶¶ 53-54.

In the same order, the SCPSC approved BellSouth's SGAT and ordered BellSouth to provide a parsed CSR and a "Single C" ordering process for UNE-P conversions in South Carolina by the time this Commission approves BellSouth's Application. *See SCPSC 271 Order* at 120-21.

Again, the SCPSC has also implemented the 1996 Act through a series of other proceedings. The SCPSC established a full set of TELRIC-compliant rates in November 2001. *See Order on UNE Rates, Generic Proceeding to Establish Prices for BellSouth Telecommunications, Inc.'s Interconnection Services, Unbundled Network Elements and Other Related Services*, Docket No. 2001-65-C, Order No. 2001-1089 (SCPSC Nov. 30, 2001) (“SCPSC UNE Pricing Order”) (App. D – SC, Tab 19). Other SCPSC proceedings, such as the arbitrations of interconnection agreements with various CLECs, are discussed in an exhibit to the joint affidavit of John Ruscilli and Cynthia Cox. *See Ruscilli/Cox Joint Aff.* Exh. JAR/CKC-22.

II. BELLSOUTH SATISFIES THE REQUIREMENTS OF TRACK A IN ALL FIVE STATES

BellSouth easily satisfies the Track A requirements of section 271 for each of the five states. Indeed, during the section 271 proceedings in the five states, no party challenged BellSouth’s compliance with Track A. *See Ruscilli/Cox Joint Aff.* ¶ 3 n.2.

In order to satisfy Track A, BellSouth must show that it

has entered into one or more binding agreements that have been approved under Section 252 of this title specifying the terms and conditions under which the Bell operating company is providing access and interconnection to its network facilities for the network facilities of one or more unaffiliated competing providers of telephone exchange service . . . to residential and business subscribers. For the purpose of this subparagraph, such telephone exchange service may be offered by such competing providers either exclusively over their own telephone exchange service facilities or predominantly over their own telephone exchange service facilities in combination with the resale of the telecommunications services of another carrier.

47 U.S.C. § 271(c)(1)(A). BellSouth has readily made this showing in each state.

Alabama. There are at least 32 facilities-based providers in Alabama. *See Stockdale Aff.* ¶ 17 & Table 2. Among the many facilities-based providers in Alabama with whom BellSouth has an interconnection agreement are AT&T, Birch Telecom, ICG Communications,